Supreme Court, U
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No. 97-1374

In The

Supreme Court of the United States

October Term, 1997

WILLIAM J. CLINTON, ET AL.,

Appellants,

v.

CITY OF NEW YORK, ET AL.,

Appellees.

On Appeal From The United States District Court
For The District Of Columbia

MEMORANDUM IN RESPONSE TO JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

Appellees agree with the statement of the Questions Presented made by appellants.

PARTIES TO THE PROCEEDINGS

Appellees agree with the statement of the Parties to the Proceedings made by appellants.

RULE 29.6 STATEMENT

The New York City Health and Hospitals Corporation has no parent company or nonwholly owned subsidiaries. Greater New York Hospital Association has no parent company. Greater New York Hospital Association has an ownership interest in the following nonwholly owned subsidiaries: AmDec, LLC; PIX, LLC; and The Health Information Network Connection, LLC. The parent company of Jamaica Hospital Medical Center is MediSys Health Network, Inc. The sole nonwholly owned subsidiary of Jamaica Hospital Medical Center is Neighborhood Health Providers, LLC.

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MEMORANDUM IN RESPONSE TO JURISDICTIONAL STATEMENT

ARGUMENT

Appellees agree that the Court should note probable jurisdiction in this case. Although the district court's decision holding the Line Item Veto Act ("Act") unconstitutional is correct, the issue is one of substantial public importance, and the Act itself places this case within the Court's mandatory appellate jurisdiction. 2 U.S.C. § 692(b). Indeed, the Court heard argument on the constitutionality of the Act last Term in *Raines v. Byrd*, ___ U.S. ___, 117 S.Ct. 2312 (1997), but held that the congressional plaintiffs in that case lacked standing to raise the issue. Accordingly, no purpose would be served by a lengthy response here to all of the arguments advanced by appellants. Nevertheless, appellees do wish to address briefly appellants' contention that this case, like *Raines*, does not satisfy the standing requirements of Article III.

The district court correctly concluded that appellee healthcare providers "suffered an immediate, concrete injury the moment that the President used the Line Item Veto to cancel section 4722(c) and deprived them of the benefits of the law." J.S. 13a.[1] Prior to the enactment of section 4722(c), the Health Care Financing Administration of the Department of Health and Human Services ("HCFA") determined that certain of New York State's healthcare provider taxes were not "broad-based" and

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[1] The district court considered the standing only of the appellee healthcare providers and did not address the standing of the other plaintiffs in this suit. J.S. 13a, n.8, citing *Bowsher v. Synar*, 478 U.S. 714, 721 (1986).

"uniform" and thus prevented a like amount of healthcare expenditures from qualifying for federal Medicaid matching funds. As a consequence, the State would have been obligated to repay these funds to the federal government unless HCFA granted New York State a waiver. By operation of state law, this liability would automatically have been passed on to appellee healthcare providers. Section 4722(c) effectively granted the State a *statutory* waiver and thus protected appellees from any liability for the repayment of matching funds. As the district court concluded, "[t]his protection constituted a benefit to Plaintiffs. When the President canceled section 4722(c), Plaintiffs were divested of the benefit conferred upon them by the legislation." J.S. 13a. Deprivation of such a benefit plainly satisfies the injury requirement of Article III.

Nevertheless, appellants contend that appellees' injury lacks a sufficient "causal nexus" to the President's cancellation. J.S. 21. Specifically, appellants posit that appellees' injury "would depend upon the decision of state officials to seek recoupment under New York law." J.S. 20. Yet, as noted above, the "decision" to impose this liability on appellees has already been made by the New York Legislature. Appellees will automatically be subject to liability by operation of state law, without regard to any decision of a state official, if the State is required to repay its matching funds. To be sure, it is possible that the New York Legislature could render this case moot by repealing its laws and thus removing the injury visited upon appellees by the President's cancellation. But this possibility, which is present in almost every case, has no bearing on the question of standing.

CONCLUSION

The Court should note probable jurisdiction.

Respectfully submitted,

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